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October 24, 1984

Sandra Edelman, Esq.
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Re: Universal City Studios, Inc. v. Nintendo Co.
Ltd. and Nintendo of America, Inc.

Dear Sandra:

We have reviewed your letter of October 17, 1984 and the enclosed documents. Your letter raises several concerns, not only with respect to your most recent document production, but more importantly, with respect to the manner in which Universal has responded to all prior discovery requests.

Our first concern involves your production of documents which have previously been withheld on grounds of attorney-client privilege. For example, with your October 17 letter you have produced a June 18, 1980 memorandum from Mr. DiMuro to Mr. Sheinberg. According to your letter, this document had been withheld because "it was protected from disclosure under the attorney-client privilege". You explain that Universal has "reconsidered its position with respect to this document . . ." and is now willing to produce it. You have also produced a December 6, 1982 memorandum from Lillian Nayfack of Universal's in-house legal department to Sharon Stern. This memorandum apparently was written in response to an employee's inquiry as to what, if any, merchandising rights Universal had in King Kong. You had not previously objected to production of this document on any grounds, including the attorney-client privilege, and now produce it without any explanation as to why it had not been previously produced or why it is now being

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produced. We assume that this document had also been previously withheld on grounds of the attorney-client privilege and that Universal has now reconsidered its position regarding production.

Your decision to now produce certain previously withheld documents amounts to a selective invocation of the attorney-client privilege. As you know, the selective invocation of the attorney-client privilege on communications or documents relating to Universal's alleged rights in King Kong constitutes a waiver of that privilege with respect to all communications and documents relating to the same subject matter. Accordingly, we request that Universal now produce all documents previously withheld on the grounds of attorney-client privilege which relate to Universal's alleged rights, including its alleged merchandising rights, in King Kong.

Universal's decision to waive the attorney-client privilege also raises serious questions as to whether certain depositions, wherein the privilege was frequently asserted, will have to be resumed. The most recent example is the deposition of Ms. Sifuentes wherein the privilege was consistently asserted on behalf of Universal on all questions concerning Universal's claimed rights in King Kong. (See, e.g. Sifuentes Dep. 12-16, 22, 55-56, 75-80, 97-99). It appears that Ms. Sifuentes' deposition, as well as the depositions of other Universal personnel, will have to be rescheduled.

The above are only examples of some of the problems we have with your production, or lack thereof, of documents on which you claim attorney-client privilege. As described above, there appear to be some documents which were previously withheld on the grounds of privilege, which are now being produced. There also appear to be some documents which were withheld on privilege grounds without any statement to us of your objections. Other documents have been produced with redactions based on the attorney-client privilege, but without any statement of the subject matter of the redaction. We therefore request that you identify each document, or portion thereof, which has been withheld, including its date, number of pages, author, recipients, the subject matter of the document, and the grounds for withholding regardless of whether those grounds have now been waived.

Your letter raises two additional concerns not relating to documents on which you have claimed the attorney-client privilege. First, you are now producing numerous documents from Universal's files which are dated either 1980 or 1982. These documents, as you acknowledge, were requested in November 1982 and January 1983. You offer no explanation for this untimely production, which comes after the completion of our depositions of Universal personnel. We are now

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considering the necessity of reopening discovery with respect to these documents.

Second, the documents produced in response to our request at Ms. Sifuentes' deposition appear incomplete. At that deposition, Ms. Sifuentes stated that Universal circulated until approximately February 1982 "licensing newsletters" in which "the availability of King Kong was made known to the trade". (Sifuentes Dep. 18-20). We requested copies of those newsletters and you responded by producing all licensing newsletters which you were able to locate, the most recent of which is dated April 1980. We believe that the newsletters produced are not completely responsive to our request. We request that a further search be undertaken to locate newsletters dated after April 1980 or that an explanation be given as to why these documents cannot be produced.

In light of the current trial schedule and the seriousness of the above described discovery deficiencies, we would appreciate an immediate response to the concerns raised herein. We look forward to hearing from you.

Sincerely yours,

John J. Kirby, Jr.

cc: Douglas C. Fairhurst

BY HAND

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